

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BioControl, LLC,

Plaintiff,

v.

Microsoft Corporation,

Defendant.

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Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

For its Complaint, Plaintiff BioControl, LLC (“BioControl”), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. BioControl is a Texas Limited Liability Company with a place of business located at 5020 Montrose Boulevard, Suite 750, Houston, Texas 77006.
2. Defendant Microsoft is a Washington corporation with a place of business located at One Microsoft Way, Redmond, Washington 98072 and with offices throughout the State of Texas including, but not limited to, 10900 Stonelake Blvd., Suite 225, Austin, TX 78759 and a Microsoft Store, which is owned or franchised by the Microsoft Corporation, located at Stonebriar Centre Mall, 2601 Preston Road, Frisco, TX 75034.

JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
5. Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly

doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Microsoft has sufficient contacts with the State of Texas and this district such that this Court is a fair and reasonable venue for litigation of this action. From and within this District, Microsoft has committed at least a portion of the infringements at issue in this case.
7. Microsoft owns and operates a Microsoft Store, which is owned or franchised by the Microsoft Corporation located at Stonebriar Centre Mall, 2601 Preston Road, Frisco, TX 75034, and that Microsoft Store sells the Xbox One and a Kinect Sports Rival game.
8. Kinect Sports Rivals was developed by Rare Ltd., a game development company, and is owned by Microsoft and located at Manor Park, Twycross, Warwickshire, CV9 3QN, United Kingdom.

THE PATENT IN SUIT

9. On July 15, 1997, United States Patent No. 5,647,834 (the “‘834 patent”), entitled “Speech-based biofeedback method and system,” was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the ‘834 patent is attached hereto as Exhibit A.
10. BioControl is the assignee and owner of the right, title and interest in and to the ‘834 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of said patent, under reel/frame 026218/0674, recorded May 4, 2011.

COUNT I – INFRINGEMENT OF U.S. PATENT 5,647,834

11. BioControl repeats and re-alleges the allegations of paragraphs 1 through 10 as if fully set forth herein.
12. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendants have infringed the '834 patent by making, using, offering for sale, importing, and/or selling within this district and elsewhere in the United States and or importing into this district and elsewhere in the United States, products and software related to biofeedback regulation of at least one physiological variable characteristic of a subject's emotional state.
13. Microsoft is, by making, using, offering for sale, importing and/or selling Xbox One with Kinect 2 game console, directly, contributorily, or indirectly infringing claims 19-22, 26-29 and 37-38 of the '834 patent.
14. Microsoft is by making, using, offering for sale and/or selling Microsoft games that infringe 19-22, 26-29 and 37-38 of the '834 patent, including but not limited to Kinect Sports Rivals, developed by Rare Ltd., a wholly owned Microsoft Subsidiary located in the United Kingdom, whose witnesses are located in the UK.
15. Claim 19 of the '834 patent is a system for effecting biofeedback regulation of at least one physiological variable characteristic of a subject's emotional state, the system comprising: a microphone for converting the subject's speech to an electrical signal, a processing means coupled to the microphone for deriving from the electrical signal at least one speech parameter characteristic of the subject's emotional state and for producing therefrom an indication signal, an indication means coupled to the processing means and responsive to the indication signal for providing the subject with an indication

of the at least one physiological variable; at least one sensor for detecting a non-speech parameter characteristic of the subject's emotional state and producing a corresponding sensor signal, and reference signal means coupled to the at least one sensor and responsive to the sensor signal for determining a reference level of said non-speech parameter when the at least one physiological variable is at a required level.

16. Microsoft's video game console, the Xbox One with Kinect 2 is a system for providing biofeedback regulation of at least one physiological variable which infringes claim 19. By way of example, Defendant's Xbox One with Kinect 2 comprises, subject to Plaintiff's infringement contentions, the following components that infringe: 1) the Xbox One with Kinect 2 has a microphone to convert a person's speech into an electrical signal; 2) the Xbox One analyzes the electrical signal received from the microphone to derive a speech based emotional characteristic of the player's emotional state; 3) a display coupled to the Xbox One processor provides the player with an indication of the at least one physiological variable; 4) at least one sensor in the Kinect 2 is for detecting a non-speech parameter characteristic of the subject's emotional state and producing a corresponding signal, and 5) at least one of the processors of the Xbox One is coupled to the at least one sensor and responsive to the sensor signal for displaying an avatar of the player that changes as the non-speech parameter characteristic of the subject's emotional state changes.

17. Claims 20-22 and 26-29 of the '834 patent depend from Claim 19 and are also infringed.

18. Claim 37 of the '834 patent is a method for effecting biofeedback regulation of at least one physiological variable characteristic of a subject's emotional state, comprising the steps of: (a) simultaneously monitoring a plurality of speech parameters having a

combined response which is characteristic of the subject's emotional state and having associated therewith a reference threshold corresponding to a reference emotional state of the subject, (b) determining the reference threshold for the subject, (c) comparing an instantaneous value of the combined response of each of the monitored speech parameters with the corresponding reference threshold so as to produce an indication signal representative of the at least one physiological variable, and (d) consciously altering the subject's emotional state so as to induce a desired change in the indication signal.

19. Microsoft's video game console, the Xbox One with Kinect 2 performs a method, when using a video game, which infringes claim 37. Microsoft's Xbox One with Kinect 2, and using, for example, the video game Kinect Sports Rivals, provides a method which does the following: (a) simultaneously monitoring a plurality of speech parameters with the Kinect 2 having a combined response which is characteristic of the subject's emotional state and having associated therewith a reference threshold corresponding to a reference emotional state of the subject, (b) determining the reference threshold for the player, (c) comparing an instantaneous value of the combined response of each of the monitored speech parameters with the corresponding reference threshold so as to produce an indication signal representative of the at least one physiological variable with at least one processor of the Xbox One, and (d) consciously altering the subject's emotional state so as to induce a desired change in the indication signal with at least one processor of the Xbox One.

20. Claim 38 depends from Claim 37 and is also infringed by operating Microsoft's system.

21. BioControl is entitled to recover from Defendants the damages sustained by BioControl as a result of Microsoft's infringement of Claims 19-22, 26-29 and 37-38 of the '834 patent in an amount subject to proof at trial, which by law, cannot be less than a reasonable royalty, together with interest and cost as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

22. BioControl hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

23. BioControl respectfully requests that the Court find in its favor and against Microsoft, and that the court grant BioControl the following relief:

- a. An adjudication that one or more claims 19-22, 26-29 and 37-38 of the '834 patent has been directly, contributorily, or indirectly infringed, either literally and/or under the doctrine of equivalents by Microsoft;
- b. An award to BioControl of damages adequate to compensate BioControl for Microsoft's acts of infringement together with costs, expenses, pre-judgment interest, post-judgment interest, and an accounting of all infringing acts;
- c. That this Court declare that Microsoft's infringement has been and continues to be willful, including that Microsoft acted to infringe the Patent-in-Suit despite an objectively high likelihood that Microsoft's actions constituted infringement of a valid patent and, accordingly award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;

- d. That this court declare this to be an exceptional case and award BioControl reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- e. Any further relief that this Court deems just and proper under the law or in equity.

Respectfully submitted,

Ramey & Browning, PLLC

/s/ William P. Ramey, III
William P. Ramey, III
Texas State Bar No. 24027643
5020 Montrose Blvd., Suite 750
Houston, Texas 77006
713-426-3923 (Telephone)
832-900-4941 (Facsimile)

Attorneys for BioControl, LLC